

# **EXHIBIT A**



1 A P P E A R A N C E S:

2 SUSAN G. WINKLER, ESQ. and JEREMY STERNBERG, ESQ.,  
United States Attorney's Office, 1 Courthouse Way, Suite  
3 9200, Boston, Massachusetts, 02210, for the Plaintiff.

4 BRIEN T. O'CONNOR, ESQ., BRIAN R. BLAIS, ESQ.,  
JOAN McPHEE, ESQ., and JOSHUA S. LEVY, ESQ., Ropes & Gray,  
5 LLP, One International Place, Boston, Massachusetts, 02110,  
for the Defendant.

6  
ALSO PRESENT: Brenton Saunders, Esq., Paul Weissman, Esq.,  
7 Edward Notargiacomo, Esq.

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1 MR. SAUNDERS: Thank you, your Honor.

2 MR. NOTARGIACOMO: Your Honor, to follow what your  
3 Honor just said about restitution to other victims of the  
4 alleged fraud, and I think you started the hearing --

5 THE COURT: Are you planning on making some  
6 restitution claims?

7 MR. NOTARGIACOMO: With respect to private payors  
8 in this case?

9 THE COURT: Yes.

10 MR. NOTARGIACOMO: That's not why I'm here, your  
11 Honor.

12 THE COURT: Well, then you don't have a place here.

13 MR. NOTARGIACOMO: Well, let me explain why I think  
14 I do have a place here, and your Honor will be the judge, as  
15 they say.

16 THE COURT: That much is true.

17 MR. NOTARGIACOMO: Your acceptance of the plea that  
18 was tendered here today is a condition precedent to the  
19 consummation of the civil agreement between the government  
20 and Schering, and that agreement relates directly to  
21 allegations that are shared with the allegations made by the  
22 civil plaintiffs in the AWP case.

23 THE COURT: I think it's specifically precluded, as  
24 I read it. There was an agreement not to prosecute on that  
25 basis. That's one of the little prongs. Am I reading that

1 correctly?

2 MR. NOTARGIACOMO: It's an agreement not to  
3 prosecute on that basis if you accept the plea here today.

4 THE COURT: Which I just did.

5 MR. NOTARGIACOMO: Let me just finish the thought,  
6 your Honor.

7 THE COURT: You know, you know, criminal law is an  
8 odd beast, and the government can prosecute on what it wants  
9 to. And sometimes I don't agree with what I'll call  
10 "charge bargaining," but that's not my hunt.

11 MR. NOTARGIACOMO: Understood, your Honor. It's  
12 been my experience, to harken back to a similar hearing five  
13 years ago in front of Judge Young when TAP Pharmaceuticals  
14 pled guilty to somewhat similar allegations, although  
15 probably worse in that context, and his concern was the  
16 restitution to the consumers and other victims of that fraud.  
17 And he made it a condition upon his acceptance of that plea  
18 that certain documents be made available, if not to the civil  
19 plaintiffs who eventually brought the lawsuit but to the  
20 Probation Department, to make sure that certain  
21 documents -- and he called it a "path to justice" by and for  
22 the civil plaintiffs. And here --

23 THE COURT: Well, who do you represent, the AWP  
24 class?

25 MR. NOTARGIACOMO: The AWP class.

1 THE COURT: I see you in every single --

2 MR. NOTARGIACOMO: Absolutely.

3 THE COURT: No, no, this isn't about that. It's  
4 possible -- I don't remember, does your firm also represent  
5 the Neurontin people?

6 MR. NOTARGIACOMO: We do. We represent the  
7 Neurontin people and the Serostim.

8 THE COURT: That's right, that's right. All  
9 right. So it's possible that some of these third-party  
10 payors are legitimate victims under the government's theory,  
11 and it's not under Schering's theory. It's possible that you  
12 can submit claims on behalf of various third-party payors  
13 like Cigna or Aetna, United; I mean, the usual suspects, you  
14 know, the usual ones who come in and the little third-party  
15 payor plans, the labor union plans and that sort of thing.  
16 And that's a very possible thing for me to address at  
17 sentencing, and if you want it, you should file for it, but I  
18 am not going to use this as a tool for the civil case.

19 MR. NOTARGIACOMO: Just to clarify to make sure  
20 we're all on the same page, what I stand here and seek is not  
21 related to the off-label marketing to which they've pled  
22 guilty but to the AWP fraud.

23 THE COURT: AWP is not part of this. It was carved  
24 out. It's just not here. And so it's not here. It's not on  
25 my radar screen for this case, although very much for your

1 case.

2 Now, that having been said, I don't know, the one  
3 piece, and that's why I flag it, is the restitution. Is  
4 there any way of working that through so that we don't spend  
5 the next five years litigating that case that's likely to  
6 fall on the heels of this? Because I think the case that's  
7 sealed is not that case. And I don't know, it might be in  
8 the interest of people to try and work that out through a  
9 restitution situation. I don't know. It may be, as  
10 Ms. Winkler says, it's just far too complicated; and, as I've  
11 seen in the other cases, it is indeed complicated. So, on  
12 the other hand, who needs to be spending the next five years  
13 in document productions and the attorneys' fees and the --  
14 gosh, it could even be related, and I might even get another  
15 one. And so the issue at the end of the day is: If there's  
16 a way of working this out through a restitution order, at  
17 least think about it. Okay? Thank you, and if you want to  
18 come back in your representative capacity for any of these  
19 third-party payors, or, for that matter, you're right, any  
20 consumers. I don't even know if people paid copays under the  
21 third-party payor plans. I don't know.

22 MR. NOTARGIACOMO: Understood.

23 THE COURT: Okay? I think there are no copayments  
24 that I know about under any Medicaid plan, although they're  
25 starting now, but in that time period, I don't think

1 consumers are part of it for the Medicaid. But in the  
2 meantime, it's 5:00 o'clock. Good to see you again. And,  
3 once again, thank you for doing what you've done subsequent  
4 to all of this. A sentencing date, right, in twelve weeks.

5 THE CLERK: It will be December 18 at 2:00 p.m.

6 (Adjourned, 5:00 p.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I, Lee A. Marzilli, Official Federal Court  
Reporter, do hereby certify that the foregoing transcript,  
Pages 1 through 45 inclusive, was recorded by me  
stenographically at the time and place aforesaid in  
Criminal No. 06-10250-PBS, United States of America Vs.  
Schering Sales Corporation, A Subsidiary of Schering-Plough  
Corporation, and thereafter by me reduced to typewriting and  
is a true and accurate record of the proceedings.

In witness whereof I have hereunto set my hand this  
26th day of September, 2006.

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LEE A. MARZILLI, CRR

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